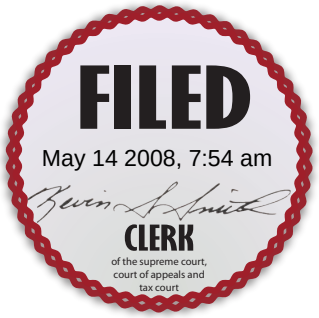

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IN THE
COURT OF APPEALS OF INDIANA

KEVIN CHANDLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0709-CR-830
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0703-FA-043831

May 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kevin Chandler appeals his conviction for the attempted murder of his infant son and his forty-year sentence. Specifically, he contends that the evidence is insufficient to prove that he acted with the intent to kill his son and that his above-advisory sentence is inappropriate. Because intent to kill may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily harm and Chandler stabbed an eleven-month-old in the back with a knife using "significant" force, we conclude that the evidence is sufficient to support Chandler's attempted murder conviction. In addition, we conclude that Chandler's forty-year sentence is appropriate in light of the heinous nature of this offense and his dubious character. We therefore affirm.

Facts and Procedural History

Angela Limbrock and Chandler's relationship began in 1998 and produced two children, K.C. and D.C. In March 2007, when K.C. was five years old and D.C. was eleven months old, Limbrock and Chandler were no longer dating, but Chandler would visit Limbrock and the children a couple times a week. According to Limbrock, Chandler did not have a very good relationship with D.C. because he questioned whether he was D.C.'s biological father. On March 14, 2007, Chandler borrowed Limbrock's car during the day. When Chandler returned Limbrock's car later that night, Limbrock agreed to drive Chandler to his brother's house. Limbrock, Chandler, and the children then proceeded to Limbrock's car. As Limbrock was getting ready to put D.C. into the car, she realized that the car seat was inside her apartment. So, she asked Chandler to hold D.C. while she went back inside to get the car seat. As Limbrock started to exit the

car, she heard D.C. crying. As Limbrock noticed that Chandler was holding D.C. face down, K.C. said, "[M]y dad has a knife." Tr. p. 57. Limbrock then saw a knife handle sticking out of D.C.'s back. Limbrock calmly instructed Chandler to give her the baby. Chandler looked at her quizzically and said "what, what?" *Id.* Limbrock quickly changed her tune and ordered Chandler to "give me the f****** baby." *Id.* Chandler let go of D.C., who still had the knife in his back, and Limbrock grabbed him and started to run. K.C. followed. Limbrock hysterically ran into a nearby apartment building, where someone called 911. In the meantime, Chandler took off in Limbrock's car. Later that night, D.C. underwent surgery at Riley Hospital for Children. While at the hospital, Chandler called Limbrock on a cell phone, and Limbrock handed the phone to a police officer, but Chandler hung up. During surgery, it was discovered that the knife did not penetrate any of D.C.'s organs, and D.C. survived. Chandler ended up going to a friend's house (and turned off the television so she apparently would not know what had happened) until his friend learned from someone else that Chandler had been on the news. His friend contacted Crime Stoppers, and the police arrived shortly thereafter to apprehend Chandler.

The State charged Chandler with Class A felony attempted murder, Class B felony aggravated battery, Class B felony battery, and Class C felony battery. Following a jury trial, Chandler was found guilty as charged. Finding that the batteries merged with attempted murder, the trial court entered judgment of conviction for attempted murder only. Following a sentencing hearing, the trial court found numerous aggravators: Chandler's history of criminal activity; he was on probation at the time of this offense; he

was in a position of trust with D.C.; D.C. was only eleven months old at the time of the stabbing; and the nature and circumstances of the crime, namely, that Chandler stuck the knife into D.C.'s back all the way to the hilt. The court found as a mitigator Chandler's mental health issues. However, the court gave this minimal weight because Chandler's mental health issue was his abuse of PCP and because Chandler had been through the criminal justice system several times, including probation, he should have received treatment. Finding that the aggravators outweighed the mitigator, the court sentenced Chandler to an above-advisory term of forty years.[1] Chandler now appeals.

Discussion and Decision

Chandler contends that the evidence is insufficient to support his attempted murder conviction and that his forty-year sentence is inappropriate.

I. Sufficiency of the Evidence

Chandler contends that the evidence is insufficient to support his conviction for attempted murder. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Trimble v. State*, 848 N.E.2d 278, 279 (Ind. 2006). If there is sufficient evidence of probative value to support the jury's conclusion, then the conviction will not be disturbed. *Id.*

The offense of attempted murder is governed by Indiana Code § 35-42-1-1 and Indiana Code § 35-41-5-1. To convict a defendant of attempted murder, the State must prove beyond a reasonable doubt that the defendant, acting with the specific intent to kill, engaged in conduct that constitutes a substantial step toward the commission of murder.

[1] The sentencing range for a Class A felony is twenty to fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4.

Mitchem v. State, 685 N.E.2d 671, 676 (Ind. 1997). Intent to kill may be inferred from the nature of the attack and the circumstances surrounding the crime as well as from the use of a deadly weapon in a manner likely to cause death or great bodily harm. *Kiefer v. State*, 761 N.E.2d 802, 805 (Ind. 2002).

Chandler argues that he did not act with the requisite intent to kill because he only stabbed his son once and did not prevent Limbrock from getting medical treatment for D.C. Indeed, Chandler asserts that had his intent been to kill D.C., he would have "repeatedly stab[bed]" him. Appellant's Br. p. 11. The evidence shows that Chandler stabbed his eleven-month-old son in the back with a knife. The pediatric surgeon who operated on D.C. testified that it would have taken "significant force to put that knife in, particularly all the way up to the hilt." Tr. p. 157. It is nothing short of a fortuitous fluke that none of D.C.'s organs were struck and that he survived. Then, after reluctantly handing over D.C. to Limbrock, Chandler fled in Limbrock's car, went to a friend's house, and turned off his friend's television. Chandler did not check on his son's status and did not cooperate with authorities. Instead, Chandler was apprehended after his friend contacted Crime Stoppers. The evidence is sufficient to support Chandler's attempted murder conviction.

II. Inappropriate Sentence

Chandler contends that his forty-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court

"may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, as the trial court put it, it was "heinous." Tr. p. 316. Chandler stabbed his eleven-month-old son in the back with a knife all the way to the hilt. And it was only "for the grace of God . . . [that] no organs [were] struck, and [D.C.] did survive." *Id.* And Chandler did this in the presence of his five-year-old son. After turning D.C. over to Limbrock, Chandler fled in Limbrock's car and did not check to see how D.C. was doing.

As for the character of the offender, Chandler, a drug abuser, has an extensive criminal history. As noted by the trial court, Chandler has 1996 and 1999 convictions for carrying a handgun without a license, a 2001 conviction for possession of cocaine, a 2001 conviction for resisting law enforcement, a 2001 conviction for carrying a handgun without a license, a 2003 conviction for operating a vehicle while intoxicated, a 2004 conviction for driving while suspended, and a 2007 conviction for criminal mischief. In addition, Chandler was on probation at the time of this offense. Although Chandler claims to be "a normally loving and attentive parent," Appellant's Br. p. 8, his character

on this occasion speaks otherwise. Given the nature of this offense and his character, Chandler has failed to persuade us that his forty-year sentence is inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.